

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SAP AG and SAP America, Inc.,

Plaintiffs,

v.

GraphicSAP, Inc.

Defendant

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CIVIL ACTION

NO. _____

JURY TRIAL DEMANDED

COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT

Plaintiff, SAP AG and SAP America, Inc. (collectively, “SAP”), in their complaint against Defendant, GraphicSAP, Inc. (“GraphicSAP”), allege and state as follows:

THE PARTIES

1. Plaintiff SAP AG is a German Joint Stock Company with a place of business at Dietmar-Hopp-Allee 16, Walldorf, Germany, 69190.
2. Plaintiff SAP America, Inc. is a Delaware corporation with a place of business at 3999 West Chester Pike, Newtown Square, Pennsylvania, 19073.
3. Defendant GraphicSAP, Inc. is a company existing under the laws of the State of Delaware, having an address at 360 E. South Water Street, Suite 4706, Chicago, Illinois, 60601. Upon information and belief, Defendant may be served with process through its registered agent, the Corporation Service Company, at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

5. Venue is proper in this jurisdiction district pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is a Delaware corporation and thus resides in this district.

FACTUAL BACKGROUND

6. Since at least 1988, SAP AG and/or SAP America, Inc. (collectively, “SAP” or “Opposers”) have used the trademark SAP®, and have operated under the trade name SAP.

7. SAP has been and continues to be one of the world’s leading software companies, and provides businesses of all sizes with innovative and collaborative business solutions and software. SAP has more than 176,000 customers in over 120 countries, and includes subsidiaries in every major country and has more than 54,000 employees in 50 countries around the globe. SAP provides software solutions to a wide variety industries, including the following: aerospace and defense, automotive, banking, chemicals, consumer products, defense and security, engineering, construction and operations, healthcare, high tech, higher education and research, industrial machinery and components, insurance, life sciences, logistics service providers, media, mill products, mining, oil and gas, postal services, professional services, public sector, railways, retail, telecommunications, utilities, and distribution.

8. SAP is the owner of U.S. Trademark Registration No. 2,538,716 for the mark SAP for “computer programs prerecorded on magnetic tapes or magnetic plates for use in mainframes, work stations, mini computers and computers other than personal computers, and instructional manuals sold therewith for use in the field of financial management; educational services; namely, providing training courses in the use and application of computer programs in the field of financial management; computer programming, computer software design and consulting services in the field of financial management ” issued on February 19, 2002, and has attained incontestable status. It remains in full force and effect. A copy of this registration is attached hereto as **Exhibit A**.

9. SAP is the owner of U.S. Trademark Registration No. 2,905,468 for the mark SAP and Design for “pre-recorded magnetic data media and programs used to perform business operations and general office functions, namely, document authoring, storage, retrieval, contention control; version history tracking, profiling, access control, and security, managing electronic mail, calendar and scheduling, desktop publishing, image editing, graphics creation and editing, drawing, computer aided design and drafting, creation of multimedia presentations, project management, customer management; business planning, business consolidation, risk management, quality management, project management, stake holder and shareholder relationship management, simulation and enterprise business management, business financial management and direct mail management; computer software and programs, in the form of computer software diskettes and compact discs, for use in connection with business operations and general office functions; prerecorded magnetic recording media, namely,

magnetic tapes, magnetic discs; magnetic hard disks and magnetic cards for use in business operations and general office functions” issued on November 30, 2004, and has attained incontestable status. This registration remains in full force and effect. A copy of this registration is attached hereto as **Exhibit B**.

10. SAP is the owner of U.S. Trademark Registration No. 2,688,099 for the mark SAP and Design for “preparation, development and design of computer programs and software for use in business operations and general office functions; implementation, repair, leasing, updating, outsourcing and maintenance of computer programs and software; consulting regarding the preparation, design, development use and application of computer programs and software; research and development in the field of computer programs and software; editing and provision of data and information on the internet regarding the development, preparation, programming, production, execution, distribution, sale, marketing, application use, operating mode, handling, modification, repair, leasing, updating, design and outsourcing of computer programs and software” issued on February 18, 2003, and has attained incontestable status. This registration remains in full force and effect. A copy of this registration is attached hereto as **Exhibit C**.

11. SAP is the owner of U.S. Trademark Registration No. 2,688,100 for the mark SAP and Design for “conducting training courses through seminars, workshops and classes in the preparation, design, use and application of electronic data processing, computer programs and software” issued on February 18, 2003, and has attained incontestable status. It remains in full force and effect. A copy of this registration is attached hereto as **Exhibit D**.

12. SAP is the owner of U.S. Trademark Registration No. 3,022,393 for the mark SAP NETWEAVER for “computer software platforms for software integration and application integration, software for application and database integration; application development software; composite software which invokes and modifies or integrates other software applications and components; software for business process automation; computer programs for transferring data to and from computer programs and computer files; computer programs for developing other computer programs; computer programs for running development programs and application programs” issued on December 6, 2005, and has attained incontestable status. This registration remains in full force and effect. A copy of this registration is attached hereto as **Exhibit E**.

13. SAP is the owner of U.S. Trademark Registration No. 3,141,056 for the mark SAP NETWEAVER for “printed materials, namely, catalogs, manuals, and operating instructions, featuring information on the operation of computer software; Internet services, namely, the preparation and provision of data and information on the internet about development, creation, programming, execution, effect, production, application, use, way of working, operation, modification, maintenance, rental, updating, and design of computer programs and software; consulting services in the fields of design, selection, creation, development, implementation, and use of computer hardware and software systems for others; research in the area of computer programs and software; creation, development and design of computer programs and software for others, in particular for business function areas, for example accounting and controlling, production and materials management, quality management and plant maintenance, marketing, personnel and project management, and general office functions such as word processing,

electronic mail, and archiving; maintenance of computer software; updating of computer software for others; rental of computer software; educational services, namely, training in the creation, development, use, and application of computer software and electronic data processing; Internet services, namely, the preparation and provision of data and information on the internet about distribution, marketing, sale, and outsourcing of computer programs and software” issued on September 12, 2006, and remains in full force and effect. A copy of this registration is attached hereto as **Exhibit F**.

14. As a result of the extensive and substantial advertising and sales of products and services under the SAP trademarks, and the maintenance of premium quality standards relating thereto, the SAP mark has become well and favorably known to the public as a distinctive indication of origin for business software systems and solutions.

15. The SAP® trademark is inherently distinctive and represents the exceedingly valuable good will of SAP’s products and services.

16. The SAP® trademark is well-known and famous.

17. The relevant public has come to rely upon and recognize SAP® software and services and the substantial goodwill associated with them.

18. The fame of this mark is noted in the 2011 Interbrand survey of Best Global Brands, in which SAP ranked 24th in a list of the world’s top brands. A copy of the Interbrand survey is attached hereto as **Exhibit G**.

19. The mark GraphicSAP fully incorporates the SAP® trademark.

20. The SAP® mark is similar to the GraphicSAP mark in sound, appearance, and meaning. The marks create the same commercial impression and are confusingly similar.

21. Defendant capitalizes the “SAP” portion of GraphicSAP, which emphasizes the SAP trademark and falsely suggests a connection with the SAP® brand.

22. Defendant’s website contains a section entitled “About SAP” on its company page, further suggesting a connection with SAP. See <http://graphicsap.com/company/company.html>, attached hereto as **Exhibit H**.

23. Defendant does not have permission, authorization, or license to incorporate the SAP® trademark within Applicant’s trademark.

24. SAP has provided products and services under the SAP® mark long prior to GraphicSAP’s adoption of GraphicSAP.

25. GraphicSAP, Inc. filed an application with the U.S. Patent and Trademark Office to register “GraphicSAP” on November 8, 2010. SAP successfully opposed this application on the grounds that it was confusingly similar to SAP’s mark, and judgment was entered against GraphicSAP, Inc. on July 29, 2011. A copy of this judgment is attached hereto as **Exhibit I**.

26. Defendant does not have permission, authorization, or license to incorporate the SAP® trademark within Applicant’s trademark.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

27. SAP repeats and realleges each and every allegation of paragraphs 1 through 26 as though fully set forth herein.

28. SAP is the owner of the federally registered SAP trademark and is the prior user of SAP in connection with business software systems and solutions.

29. The federally registered SAP trademark identifies the source of SAP's products and services.

30. Upon information and belief, Defendant has used the GraphicSAP name in interstate commerce in connection with business software and related services.

31. Defendant's unlawful acts constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114.

32. Defendant's knowing and unauthorized use of the confusingly similar GraphicSAP name is likely to cause confusion or to cause mistake or to deceive the purchasing public and constitutes trademark infringement in violation of the Lanham Act, 15 U.S.C. §§ 1051 through 1137, specifically § 32(a) of the Lanham Act, 15 U.S.C. § 1114.

33. As a direct consequence of Defendant's unlawful acts and conduct, SAP has suffered and will continue to suffer damage to its business, reputation and goodwill for which SAP is entitled to relief.

34. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to SAP for which there is no adequate remedy at law, and for which SAP is entitled to injunctive relief.

COUNT II
FEDERAL UNFAIR COMPETITION

35. SAP repeats and realleges each and every allegation of paragraphs 1 through 34 as though fully set forth herein.

36. As a result of longstanding and extensive use and wide recognition, Plaintiff's SAP trademark has become distinctive as an indication of the source.

37. Defendant has knowingly and willfully used the GraphicSAP name in commerce, a name that is confusingly similar to Plaintiff's SAP trademark, and appears likely to continue and increase that use in the future.

38. Defendant's use of the GraphicSAP name in connection with business software and related services is likely to cause confusion or to cause mistake or to deceive as to affiliation, connection or association and constitutes false designation of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. The aforesaid acts constitute federal unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. As a direct consequence of Defendant's unlawful acts and practices, SAP has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which SAP is entitled to relief.

41. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to SAP for which there is no adequate remedy at law and for which SAP is entitled to injunctive relief.

COUNT III
DELAWARE STATUTORY DECEPTIVE TRADE PRACTICES

42. SAP repeats and realleges each and every allegation of paragraphs 1 through 41 as though fully set forth herein.

43. Defendant's use of the GraphicSAP name in connection with software and related services constitutes, *inter alia*, a passing off of its goods/services; causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval of its goods/services; causes a likelihood of confusion or of misunderstanding as to affiliation, connection, or association with another; represents that its goods/services have sponsorship or approval that they do not have; engages in conduct which similarly creates a likelihood of confusion or of misunderstanding within the meaning of the Uniform Deceptive Trade Practices Act as enacted at 6 Del. C. § 2532

44. As a direct consequence of Defendant's unlawful acts and practices, SAP has suffered and will continue to suffer damage to its business reputation and goodwill, for which SAP is entitled to relief.

45. By reason of Defendant's unlawful acts and practices, Defendant has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to SAP for which there is no adequate remedy at law and for which SAP is entitled to injunctive relief.

REQUEST FOR JURY TRIAL

Plaintiff SAP hereby requests a jury trial on all issues raised herein.

WHEREFORE, SAP requests the following relief:

A. That Defendant, its officers, directors, shareholders, principals, agents, servants, employees, attorneys and related companies, and all persons in active concert or participation with one or more of them, be preliminarily and permanently enjoined and restrained from using the GraphicSAP name and any mark/name that is confusingly similar to SAP.

B. That this Court award SAP damages adequate to compensate SAP for Defendant's acts of trademark infringement and unfair competition.

C. That SAP be awarded its actual damages and lost profits in an amount to be proven at trial.

D. That Defendant be required to account for any profits attributable to its infringing acts.

E. That SAP be awarded the greater of three times Defendant's profits or three times any damages sustained by SAP and prejudgment interest.

F. That punitive damages be awarded to SAP.

G. That all products, labels, signs, advertisements and web site content in Defendant's possession, custody or control bearing the GraphicSAP name or any confusingly similar word, term, name, symbol, device or combination thereof that is found in violation of the Lanham Act or any reproduction, counterfeit, copy or simulation thereof shall be delivered up by Defendant and destroyed or sufficiently altered to remove all reference to the GraphicSAP name.

H. That Defendant be required to pay Plaintiff's costs of this action together with reasonable attorneys' fees and disbursements.

I. That SAP be awarded such other and further relief as the Court may deem just and proper.

Dated: December 27, 2011

STAMOULIS & WEINBLATT LLC

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